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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/784,604	02/23/2004	Heather Gillis	1833K	8303
54964	7590	11/13/2006		
TYCO HEALTHCARE - EDWARD S. JARMOLOWICZ 15 HAMPSHIRE STREET MANSFIELD, MA 02048			EXAMINER THANH, QUANG D	
			ART UNIT 3771	PAPER NUMBER

DATE MAILED: 11/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/784,604

Applicant(s)

GILLIS ET AL.

Examiner

Quang D. Thanh

Art Unit

3771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 31 August 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2,4,5 and 7-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-2, 4-5, 7-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### DETAILED ACTION

1. This office action is responsive to the amendment filed on 8/31/06. As directed by the amendment: claims 1,16, 20-22 have been amended; claims 3 and 6 have been cancelled; and new claims 24-26 have been added. Thus, claims 1-2, 4-5,7-26 are presently pending in this application.

#### *Claim Objections*

2. Claim 24 is objected to because- of the following informalities: "the strap **member**" lacks antecedent basis. Appropriate correction is required.

#### *Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-2, 4-5, 7-26 are rejected under 35 U.S.C. 102(e) as being anticipated by Rutt et al. (6,592,534).

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5. Re claims 1-2, 4-5, and 24, Rutt discloses a compression apparatus (fig. 2) comprising: an expandable body (including 14/16 and 30 as shown in fig. 2) configured for disposal about a foot (fig. 1); a strap 18 (including 46) extending from the body (fig. 2), the strap being configured for disposal about the foot adjacent an ankle (fig. 1), wherein the strap has a first upper layer 52 (fig. 4, col. 4, lines 27-40) configured to engage an outer surface of the foot adjacent the ankle, a second lower layer 52 and a third cushion layer 50 disposed between the first and second layer (best seen in fig. 4); wherein the strap 18 has at least one segmented portion 20 (fig. 2) configured to contour the strap about the foot; the portion 20 is positioned along the strap (fig. 2); wherein the strap is integrally connected to the body (fig. 2); wherein the body includes the first layer 54 (fig. 4) and the second layer 24 (fig. 4); the strap 18 is positioned between a foot contact layer 54 and an outer layer 24 of the foot sleeve body (fig. 4)

6. Re claims 7- 15, Rutt discloses the third cushion layer 50 is disposed within the first layer and the second layer such that the first layer and the second layer are configured to provide a barrier to the third cushion layer 50 (best seen in fig. 4); wherein the body includes a metatarsal strap 18 (fig. 2); wherein the first layer includes layer of a soft material ("fabric material", col. 4, lines 38-39) and a flexible film ("urethane film", col. 4, lines 35-37); wherein the third cushion layer 50 includes a foam material ("urethane foam", col. 4, lines 35-36); wherein the second layer includes a flexible film (thin rayon-based fibrous material, col. 3, lines 54-60) and an outer surface having a loop material disposed therewith (col. 3, lines 59-61); wherein the second layer 24 has an outer surface including a loop material such that the metatarsal strap 18 includes

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hook elements 26 that are engageable with the loop material to mount the expandable body with the foot (figs. 1-2); wherein the body includes a metatarsal strap 18 having hook elements 26 (fig. 2) that are engageable with the loop material to mount the expandable body with the foot.

7. Re claims 16-19, Rutt discloses a compression apparatus comprising: a foot sleeve 14/16 including an inflatable body 30 configured for disposal about a foot, the foot sleeve including a metatarsal portion 16 (fig. 2); a strap 18 (including 46) comprising a first 52 and second layer 52 (fig. 4), the strap mounted between a foot contact layer 54 and an outer layer 24 of the foot sleeve body; and extending therefrom, the strap 18 being configured for disposal about the foot adjacent an ankle (fig. 1), wherein the strap has a first upper layer 52 configured to engage an outer surface of the foot adjacent the ankle, a second lower layer 52 and a third cushion layer 50 disposed between such that the first layer and the second layer are configured to provide a barrier to the third cushion layer (fig. 4); wherein the first layer is configured to prevent engagement of the third cushion layer with the outer surface of the foot (fig. 4); wherein the third cushion layer 50 includes a foam material ("urethane foam", col. 4, lines 35-36); wherein the strap has a segmented configuration (two segments 20, fig. 2) for contour with the foot.

8. Re claims 20-21, Rutt discloses a compression apparatus comprising: a foot sleeve including an inflatable bladder 30 configured for disposal about a foot, the foot sleeve including a metatarsal portion 18 that overlies the foot; a strap 22 (including 48) mounted between a foot contact layer 54 and an outer layer 24 of the foot sleeve body

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and extending therefrom, the strap being configured for disposal about the foot adjacent an ankle (fig. 1), wherein the strap has a foot contact upper layer 52 including a soft material that is configured to engage an outer surface of the foot adjacent the ankle, an outer lower layer 52 and a cushion layer 50 including foam material disposed therebetween such that the foot contact layer and the outer layer 24 are configured to provide a barrier to the cushion layer 50, the outer layer having an outer surface including a loop material (col. 3, lines 59-61) such that the metatarsal portion includes hook elements 26 that are engageable with the loop material to mount the foot sleeve with the foot; wherein the compression apparatus includes a plurality of straps 20 extending from the body (fig. 2).

9. Re claims 22-23, Rutt discloses a compression apparatus comprising: an expandable body 14 configured for disposal about a foot, the expandable body including a top layer 42 and a bottom layer 24 (fig. 3); and a strap member 18 (including 46) extending from the expandable body (fig. 2), wherein a portion of the strap member is mounted between a foot contact layer and an outer layer of the expandable body (best seen in figs. 2-4); wherein the strap member includes a plurality of layers, whereby the plurality of layers comprises an interiorly disposed cushion layer 50 (fig. 4).

10. Re claims 25-26, Rutt discloses a compression apparatus comprising: an expandable body 14 configured for disposal on a limb, the strap extending from the body and releasably attached to the body via 26 for securing the body to the limb, the strap has at least one segmented portion 20 (fig. 2) positioned along the strap (fig. 2);

for providing a contour fit about the limb and releasably attached to the body using hook and loop material 26/24 (fig. 2, col. 3, lines 51-64).

### ***Response to Arguments***

11. Applicant's arguments filed 8/31/06 have been fully considered but they are not persuasive.

12. In response to applicant's argument that "the Rutt '354 strap 18 does not have a segmented portion", the examiner respectfully disagrees. Applicant's attention is directed to fig. 2, which clearly shows strap 18 having 2 segmented portions 20 (upper and lower portions).

13. In response to applicant's argument re claim 16 that "the present invention is a two-piece construction", it is noted that the feature upon which applicant relies (i.e., two-piece construction) is not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Moreover, it is also noted that the language of the claim only requires "a strap mounted between the foot contact layer and outer layer of the foot sleeve body" and Rutt '354 clearly shows (in fig. 4) a portion of the strap (18 or 22) mounted between the foot contact layer 54 and outer layer 24 of the foot sleeve body and thus appears to comprehend the claimed language.

***Conclusion***

14. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Quang D. Thanh whose telephone number is (571) 272-4982. The examiner can normally be reached on Monday-Thursday & alternate Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The Central FAX phone number for the organization where this application or proceeding is assigned is (571) 273-8300 for all communications.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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